

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

77-438

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

ELLSWORTH BOLDRIDGE and MARY BOLDRIDGE, his wife,

Petitioners,

AGAINST

ESTATE OF WALTER A. KEIMIG, DECEASED,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF THE STATE OF KANSAS

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

ELLSWORTH BOLDRIDGE and MARY BOLDRIDGE, His Wife,
Petitioners,
AGAINST
ESTATE OF WALTER A. KEIMIG, Deceased,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF THE STATE OF KANSAS

OPINIONS BELOW

1. In the Supreme Court of the State of Kansas
the Opinion is reported in 222 Kan. 280, Adv. No. 2,
_____ P.2d _____, and is annexed hereto as Appen-
dix 1.

2. The Memorandum Decision of the District
Court of Doniphan County, Kansas is dated October 9,
1975, and is not officially reported, but a copy
thereof is annexed hereto as Appendix 2.

JURISDICTION

1. As provided by law, petitioners herein filed their Notice of Appeal from the decision of the District Court of Doniphan County, Kansas with the Clerk of the District Court of Doniphan County Kansas on the 5th day of November, 1975. Thereafter as provided by law, the Record on Appeal was filed with the Clerk of the Supreme Court of the State of Kansas on December 10, 1975.

Thereafter, on the 14th day of May, 1977, the Supreme Court of the State of Kansas rendered its decision affirming the decision of the District Court of Doniphan County, Kansas.

2. Petitioners' Motion For Rehearing Or In The Alternative for Modification was denied by order of the Supreme Court of the State of Kansas on June 15, 1977. A copy of that order is annexed hereto as Appendix 3.

3. Jurisdiction of the United States Supreme Court to review the final order of the Supreme Court of the State of Kansas is conferred by 28 U.S.C. 1257(3)(a), in that titles, rights, privileges and immunities of the petitioners are specially claimed to

be violated which are provided under the United States Constitution.

QUESTION PRESENTED

Whether the judgment of the District Court of Doniphan County, Kansas ascribing to the judgment of another court of coordinate jurisdiction the binding force and effect of *res judicata* constituted a denial of due process to be heard when petitioners timely resorted to the Probate Court and filed their petition to recover certain real estate from a decedent's estate, and pending a disposition of that petition and some months subsequent thereto, the executrix of said estate instituted a quiet title suit in the District Court of Atchison County, Kansas, and that court adjudicated title to said real estate, adverse to petitioners.

STATUTORY AUTHORITIES

1. Provisions from the U.S. Constitution.

Fourteenth Amendment, Section 1:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Former statutory provision in effect at the time of the claim herein:

K.S.A. 59-2237:

"Any person may exhibit his demand against the estate of a decedent by filing his petition for its allowance in the proper probate court. Such demand shall be deemed duly exhibited from the date of the filing of said petition. The petition shall contain a statement of all offsets to which the estate is entitled. The court shall from time to time as it deems advisable, and must at the request of the executor or administrator, or at the request of any creditor having exhibited his demand, fix the time and place for the hearing of such demands, notice of which shall be given in such manner and to such persons as the court shall direct. Any demand not exceeding fifty dollars, duly itemized and verified, may be allowed, if approved in writing by the executor or administrator, without compliance with any of the provisions of this act relating to petition, notice of hearing, or otherwise. The verification of any demand may be deemed prima facie evidence of its validity unless a written defense thereto is filed. Upon the adjudication of any demand, the court shall enter its judgment allowing or disallowing it. Such judgment shall show the date of adjudication, the amount allowed, the amount disallowed, and classification if allowed. Judgments relating to contingent demands shall state the nature of the contingency."

3. Statutory provisions relating to quiet title actions in the District Court.

K.S.A. 60-1002(a):

"An action may be brought by any person claiming title or interests in personal or real property, including oil and gas leases, mineral or royalty interests, against any person who claims an estate or interest therein adverse to him or her, for the purpose of determining such adverse claim."

K.S.A. 59-1401 in pertinent part reads:

". . . . He may by himself, or with the heirs or devisees, maintain an action for the possession of the real estate or to quiet title to the same."

STATEMENTS OF THE CASE

The petitioners herein filed their petition entitled "To Strike From The Inventory Certain Real Estate And Determine Ownership Thereto" in the estate of Walter A. Keimig, deceased, in the Probate Court of Doniphan County, Kansas on March 25, 1972 (R 1).* Thereafter on

* Unless otherwise indicated numbers in parentheses refer to pages in the Record on Appeal (R -) or Supplemental Record on Appeal (SR -) to the Supreme Court of the State of Kansas.

August 30, 1972, a petition was filed to transfer the matter herein to the District Court of Doniphan County, Kansas, and the petitioners' petition filed in the Probate Court of Doniphan County, Kansas was continued indefinitely (SR 1).

During the pendency of petitioners' petition to strike from the inventory certain real estate and determine ownership thereto, on September 21, 1972, Goldie Keimig, executrix of the estate of Walter A. Keimig, deceased, commenced an action for quiet title against these petitioners in the District Court of Atchison County, Kansas (R 14).

Over the objections of the petitioners to the jurisdiction of the District Court of Atchison County, Kansas, the matter proceeded to trial on October 15, 1973. Thereafter on February 13, 1974, the District Court of Atchison County, Kansas made His Findings of Fact and Conclusions of Law and rendered judgment accordingly in favor of Goldie Keimig, executrix, and against these petitioners (R 18).

Thereafter on the 20th day of June, 1975, Goldie Keimig, executrix, petitioned the Probate Court of Doniphan County, Kansas to settle the estate, and upon the filing of her petition for final settlement the Probate Court of Doniphan County, Kansas made an order on the 21st day of May, 1975, fixing the date of hearing on her petition for the 20th day of June, 1975, and directing notice of said hearing to be published and mailed pursuant to K.S.A. 59-2209 (SR 3).

Thereafter on June 2, 1975, Goldie Keimig, executrix filed her affidavit of mailing which reflected that such notice was mailed to herself and failing to reflect any notice mailed to the petitioners herein announcing the date of hearing on her petition for final settlement. As a matter of fact, petitioners did not receive any notice of hearing (R 3). It was by pure accident that petitioners learned of the hearing date on the petition for final settlement, and petitioners contacted the Probate Court of Doniphan County, Kansas and the attorney for the executrix a few days prior to June 20, 1975, the date of the hearing,

and made provisions for petitioners' petition to be considered. On the 20th day of June, 1975, the Probate Court rendered its judgment of final settlement and also denied petitioners' petition to strike from the inventory certain real estate and determine title thereto (R 4).

Within the statutory period petitioners effected their appeal to the District Court of Doniphan County, Kansas (R 1). Thereafter Goldie Keimig, the executrix filed her Motion For Summary Judgment in the District Court of Doniphan County, Kansas, premised on the grounds that the adjudication of the quiet title action in the Atchison County District Court was res judicata. Said motion was heard by the District Court of Doniphan County, Kansas and on October 9, 1975, granted said motion on the grounds that the judgment of the quiet title action in the District Court of Atchison County, Kansas was res judicata (R 23). Within the statutory period and on the 5th day of November, 1975, the petitioners filed their Notice of Appeal to the Supreme Court of the State of Kansas from the judgment of the

District Court of Doniphan County, Kansas (R 25).

Thereafter on May 14, 1977, the Supreme Court of the State of Kansas affirmed the judgment of the District Court of Doniphan County, Kansas, and in so doing held that the Atchison County District Court had jurisdiction to determine the quiet title action. Also the petitioners litigated the quiet title action and their attempt to litigate the matter in the Probate proceedings in Doniphan County was improper. That the venue of the matter was in Atchison County, and that the District Court of Doniphan County was correct in sustaining the motion for summary judgment, notwithstanding that the reason of res judicata which the District Court of Doniphan County assigned was erroneous. (See Appendix 1)

The Supreme Court of the State of Kansas denied petitioners' motion for rehearing or in the alternative for modification on June 15, 1977. (See Appendix 3)

The constitutional issue of denial of due process was raised by petitioners in the District Court of Doniphan County, Kansas in their resistance to the motion for summary judgment on the basis that they

would be denied their day in court if the trial court were to sustain the motion for summary judgment. It was further raised in the Probate Court of Doniphan County, Kansas when Goldie Keimig, executrix, failed to serve notice of hearing upon petitioners of her petition for final settlement. Although not specifically mentioned as a denial of due process, petitioners argued to the Supreme Court of the State of Kansas that they were denied their day in court in the District Court of Doniphan County, Kansas because that court sustained the motion for summary judgment on the basis of res judicata.

Inferentially the constitutional issue of denial of due process was included in petitioners' Statement of Points on which they relied for a reversal of the lower court's decision sustaining the summary judgment (R 24).

ARGUMENT

Certiorari should be granted because this case turns on an issue of denial of due process of law which:

- (1) arises under the Fourteenth Amendment;
- (2) affects nearly every state in the nation;
- (3) specifically, the situation here has never been passed upon by the Supreme Court.

We shall discuss each of these points separately.

1. THE ISSUE ARISES UNDER THE FOURTEENTH AMENDMENT.

We have contended throughout all proceedings herein, with the support of legal precedents from the Court of last resort of the state of Kansas, that a court of competent jurisdiction first acquiring jurisdiction of the subject matter and of the parties continues and no court of coordinate jurisdiction shall interfere with its action. As was said in Schaefer v. Milner, 156 Kan. 768, 137 P.2d 156:

"The general rule is that when a court of competent jurisdiction acquires jurisdiction of the subject matter and of the parties, its jurisdiction continues as to all matters therein involved until the issues are finally disposed of, and no court of coordinate jurisdiction should interfere with its action." (Syl. 1) (Emphasis added)

See Wheeler v. Wheeler, 196 Kan. 697, 414 P.2d 1;

Perrenoud v. Perrenoud, 206 Kan. 559, 480 P.2d 749.

Here, the petitioners invoked the jurisdiction of the Probate Court of Doniphan County, Kansas, by filing their petition on March 25, 1972 (R 1), seeking to recover certain real estate pursuant to accretion rights, from the estate of Walter A. Keimig, deceased. Thereafter, on September 21, 1972, Goldie Keimig, the executrix of said estate, instituted her action to quiet title to said real estate in the District Court of Atchison County, Kansas, notwithstanding the pendency of petitioners' filed claim in the Probate Court in Doniphan County. Yet pending the petitioners' claim in the Probate Court of Doniphan County, the District Court of Atchison County proceeded to render judgment quieting title in favor of Goldie Keimig, the executrix, on February 13, 1974.

Based upon the Atchison County District Court judgment, the Doniphan County District Court ruled that this judgment was res judicata, barring petitioners' rights to be heard on their claim originally filed in the Probate Court of Doniphan County, Kansas.

Albeit, the Supreme Court's disapproval of the reason of res judicata applied by the Doniphan County District Court's decision, nonetheless, petitioners were denied their day in court to have their claim properly adjudicated, which constituted a denial of due process of law guaranteed under the Fourteenth Amendment. As was said in Hansberry v. Lee, 311 U.S. 32, 85 L.Ed 22, 61 S.Ct. 115:

"Where judgment of a state court ascribing to the judgment of another court the binding force and effect of res judicata is challenged for want of due process, it becomes the duty of the United States Supreme Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process of law which the Fourteenth Amendment prescribes."

It is without question that a state may regulate the procedure of its courts in accordance with its own conception of policy and fairness unless it offends some principle of justice ranked as fundamental, such as the requirements of hearing and notice. Bute v. Illinois, 333 U.S. 640, 92 L.Ed 986, 68 S.Ct. 763; Snyder v. Massachusetts, 291 U.S. 97, 78 L.Ed 674, 54 S.Ct. 330;

Hardware Dealers Mut. F. Ins. Co. v. Glidden Co.,

284 U.S. 151, 76 L.Ed 214, 52 S.Ct. 69; Frank v.

Mangum, 237 U.S. 309, 59 L.Ed 969, 35 S.Ct. 582;

Estes v. Texas, 381 U.S. 532, 14 L.Ed.2d 543,

85 S.Ct. 1628, reh den 382 U.S. 875, 15 L.Ed.2d 118,

86 S.Ct. 18; Burgett v. Texas, 389 U.S. 109, 19 L.Ed.2d

319, 88 S.Ct. 258; Holt v. Virginia, 381 U.S. 131,

14 L.Ed.2d 290, 85 S.Ct. 1375.

The state of Kansas, as all other states, has provided by statute and court decisions within its judicial system a designated court for a litigant to resort for processing of a claim against a decedent's estate, which is the Probate Court. (K.S.A. 59-2237)

As here, the petitioners, in the exercise of their legal rights, resorted to the Probate Court, which is the only tribunal available to them, who were seeking to remove assets from a pending estate.

It has long been the law in the state of Kansas that the Probate Court's jurisdiction is exclusive to determine title to real estate which is an asset in a decedent's estate. Wright v. Rogers, 167 Kan. 297,

205 P.2d 1010. This rule of law is synonymous with the rule of law: when seeking to remove any assets from a decedent's estate the Probate Court has exclusive jurisdiction. The Supreme Court of the State of Kansas has consistently adhered to this principal of law, until the instant case was presented. A classical detailed discussion is found in In re Estate of Thompson, 164 Kan. 518, 190 P.2d 879:

"First Class. Those cases in which the plaintiff sought to get something out of the estate. These include not only demands of creditors, but of those asserting some special claim to all or a portion of the estate either as heirs or under a will or under alleged contract with the decedent.

"It may be that in discussing such 'demands' the distinction has not always been clearly drawn between claims of creditors against the estate and claims of those seeking a share in the estate after creditors' demands are met. But whether one or the other, the petitioner seeks something out of the assets of the estate. And in either case the demand is clearly incident to administration and must be determined before distribution of assets can properly be made.

"Second Class. Principally, those cases, naturally fewer in number, wherein an administrator or executor sought to bring property of some sort into the assets of the estate, or otherwise to realize something of benefit to the estate. Also one case brought by an heir where, under particular facts to be noted, jurisdiction was in the District Court.

"In cases of the first class, it has uniformly been held that the probate court has exclusive original jurisdiction. In the second class it has been held without exception, we believe, that the action was properly brought in the District Court. In summarizing the decided cases we have no intention of indulging in the precarious pastime of generalizing as to issues that may hereafter arise in particular cases. As to the first class of cases it may well be said, however, that rule has been so frequently and firmly stated as to leave little room to doubt its applicability to any sort of a claim, whether absolute or contingent, whether denominated legal or equitable, which seeks to reach the assets of the estate and the determination of which is necessary before settlement distribution. All such claims are subject to the nonclaim statute, G.S. 1947 Supp. 59-2239."

(See Hildenbrand v. Brand, 183 Kan. 414, 327 P.2d 887;

Weaver Administrator v. White, 190 Kan. 291, 374 P.2d

219; Shields v. Fink, Executrix, 190 Kan. 17, 372

P.2d 252; Oswald v. Weigel, 215 Kan. 928, 529 P.2d 117.)

Notwithstanding these well settled principals of law, within the state of Kansas, the Supreme Court of the State of Kansas deviated therefrom by affirming a lower court's decision which had the binding force and effect of res judicata, which denied to these petitioners their day in court in a proper judicial tribunal which was the only place for them to resort for proper redress.

2. THE ISSUE AFFECTS NEARLY EVERY STATE IN THE NATION.

As mentioned above each state, by statute, has provided within their respective judicial systems a court vested with jurisdiction over decedent's estates and all matters relating thereto. In addition thereto, these states either by statute and/or by court decisions have adopted the coordinate jurisdiction policy, which is designed for implementing a proper and orderly administration of justice, accordingly preventing unseemly expensive and dangerous conflicts of jurisdiction and of process. An expression from this Court is essentially necessary to give general application to all states in order that the constitutional rights of litigants can best be protected.

3. SPECIFICALLY, THE SITUATION HERE HAS NEVER BEEN PASSED UPON BY THE SUPREME COURT.

Although this Court has, on many occasions, dealt with due process problems, none of which that we are aware of have dealt with the specific issue herein. The decision of this Court coming close is Hansberry v. Lee, supra.

SUMMARY AND CONCLUSION

This case presents the crucial issue of these petitioners being denied due process of law contrary to the guarantees under the Fourteenth Amendment in that they were denied the right to have their claim adjudicated in the Probate Court, the only judicial tribunal for them to resort as provided under Kansas law.

The time is ripe for this Court to resolve whether a state court of coordinating jurisdiction which is invoked by one of the litigants, subsequent to and while pending a litigation involving the same subject matter and the parties in a court of competent jurisdiction, which a judgment is rendered in the last court assuming jurisdiction which judgment had the binding force and effect of res judicata.

A writ of certiorari should issue to review the order and opinion of the Kansas Supreme Court.

Respectfully submitted,



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DATED: September 9, 1977.

STATE COURT JUDGMENTS AND OPINIONS

Appended hereto are the following judgments, orders
and opinions rendered in the Kansas State courts below:

Appendix 1 -- Opinion of Supreme Court of Kansas,
(Page 1a) dated May 14, 1977 (Schroeder, J.).

Appendix 2 -- Memorandum Decision of the District
(Page 21a) Court of Doniphan County, Kansas
dated October 9, 1975.

Appendix 3 -- Order of Supreme Court of Kansas,
(Page 25a) dated June 15, 1977.

APPENDIX 1, OPINION OF SUPREME COURT OF KANSAS,
DATED MAY 14, 1977 (SCHROEDER, J.).

IN THE SUPREME COURT OF THE STATE OF KANSAS

ELLSWORTH BOLDRIDGE and MARY BOLDRIDGE, His Wife,
Appellants,

v.

ESTATE OF WALTER A. KEIMIG, Deceased,
Appellee.

Dated: May 14, 1977
Index No. 280-288
Case No. 48,179

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This is an appeal in a probate case from the order
of the district court of Doniphan County refusing to

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remove certain real property claimed by Ellsworth and Mary Boldridge from the estate of Walter A. Keimig, deceased.

The appellants contend the district court of Doniphan County, Kansas, erred in sustaining a motion for summary judgment on the ground that a judgment in a quiet title action in the district court of Atchison County, Kansas, was res judicata. This position of the appellants is clarified by their second argument which is to the effect that the probate court of Doniphan County, Kansas, had jurisdiction to entertain their petition seeking to remove the real property in question from the estate of Walter A. Keimig, deceased, while the district court of Atchison County, Kansas, had no jurisdiction to adjudicate the ownership of the real estate in question because the probate court of Doniphan County assumed jurisdiction in the matter prior to the date upon which the petition to quiet title was filed in the district court of Atchison County where the land

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in question was situated.

Walter A. Keimig was a resident of Doniphan County, Kansas. He owned and farmed land in Doniphan County and Atchison County, Kansas. He died testate on June 21, 1971.

Probate proceedings were initiated in the probate court of Doniphan County by Goldie Keimig, Walter's sole and only heir. Goldie Keimig, as the duly qualified executrix, filed an inventory and appraisal claiming as part of the decedent's estate the following described land in Atchison County, Kansas:

"Commencing at a point on the South line of the Northeast Quarter of the Northwest Quarter of Section 28, Township 6 South, Range 21 East of the 6th P.M., Atchison County, Kansas, where the Missouri Pacific Railroad right-of-way crosses said South line, thence due East on said line to the West bank line of the Missouri River, thence Northwesterly along said Bank to an iron pipe set on the West Bank of said Missouri River in the Northwest Quarter of Section 21, Township 6, Range 21, approximately 1100 feet Northwest of where the said West bank of the said Missouri River crosses the East and West center line of said Section 21, thence Southwesterly on a compass course of 248 degrees 40 minutes approximately

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1,398.7 feet to a point intersecting the Missouri Pacific Railroad right-of-way in the Northeast Quarter of Section 20, Township 6, Range 21, Atchison County, Kansas, thence Southeasterly along said Missouri Pacific Railroad right-of-way to point of beginning; also the North 4 acres of the South half of the East 10 acres of the Northeast Quarter of the Southeast Quarter, and the North half of the East 10 acres of the Northeast Quarter of Southeast Quarter of Section 20, Township 6, Range 21."

On March 25, 1972, Ellsworth and Mary Boldridge (plaintiffs-appellants) filed a petition, denominated as a petition to "Strike From the Inventory Certain Real Estate and Determine Ownership Thereto." On August 30, 1972, the appellants petitioned for a transfer of this matter to the district court of Doniphan County. (This action was apparently based on a contract for purchase from Lucy V. H. Ingalls, trustee, in the year 1954, and on a deed dated October 11, 1965, executed by Sally Ingalls Keith, successor trustee to Lucy V. H. Ingalls, which deed was recorded on October 20, 1966.)

Meanwhile, on September 21, 1972, Goldie Keimig commenced a quiet title action against the appellants

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in the district court of Atchison County concerning the disputed Atchison County land. This quiet title action alleged the Keimigs had been in peaceable, open, notorious, hostile, adverse, continuous and exclusive possession of the previously described real estate for more than fifteen years. Furthermore, the Keimigs introduced three deeds dated between the dates of September 1, 1948, and February 2, 1952.

The Boldridges answered and on October 15, 1973, this matter was heard in the Atchison County district court. On February 13, 1974, the Atchison County district court found Walter Keimig was the owner of the disputed land and that the Boldridges had at no time farmed or been in possession of the disputed land. Furthermore, the Atchison County district court found in 1956 Walter Keimig obtained a judgment quieting title to the disputed land against Lucy V. H. Ingalls.

The Boldridges perfected their appeal from the adverse judgment in the quiet title suit. However, on

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January 10, 1975, the appeal was deemed abandoned pursuant to Rule No. 6(p)(214 Kan. xxv) of the Rules of the Supreme Court of Kansas. On February 27, 1975, this court denied a motion to set aside the order dismissing the appeal.

The executrix then proceeded to settle the estate in the Doniphan County probate court. On June 20, 1975, a hearing on her petition for final settlement was held. The probate court denied the Boldridges' petition to strike real estate from the inventory. The Boldridges then appealed to the district court of Doniphan County, where the executrix filed a motion for summary judgment pursuant to K.S.A. 60-256(b), contending that the adjudication of the quiet title action in the Atchison County district court was res judicata. On October 9, 1975, the Doniphan County district court sustained the motion on the ground alleged in the motion.

On appeal, which has been duly perfected, the appellants contend the Doniphan County courts first

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obtained jurisdiction of this matter and had continuing jurisdiction, so that no court of coordinate jurisdiction could interfere. The appellants also contend the probate court has exclusive jurisdiction to determine title to real estate in a decedent's estate. (Citing Wright v. Rogers, 167 Kan. 297, 205 P.2d 1010.)

Here the executrix was duly qualified and filed an inventory which included the real estate in dispute. The appellants filed their petition to "Strike From the Inventory Certain Real Estate and Determine Ownership Thereto" in the probate court, and petitioned for a transfer of the matter to the district court of Doniphan County. Was the action of the executrix thereafter in commencing a quiet title action in the district court of Atchison County, where the real estate in dispute was located, proper?

The appellants rely on the general rule of law that when one seeks to remove assets out of an estate of a decedent, the probate court has exclusive original

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jurisdiction of the matter. When an executor or administrator seeks to bring property into the assets of an estate of a decedent, or otherwise to realize something of benefit to the estate, the action is properly brought in the district court or some other court of competent jurisdiction. (In re Estate of Thompson, 164 Kan. 518, 190 P.2d 879; Hildenbrand v. Brand, 183 Kan. 414, 327 P.2d 887; Hudson, Administrator v. Tucker, 188 Kan. 202, 208, 361 P.2d 878; Shields v. Fink, Executrix, 190 Kan. 17, 372 P.2d 252; Weaver, Administrator v. White, 190 Kan. 291, 374 P.2d 219; Oswald v. Weigel, 215 Kan. 928, 932, 529 P.2d 117; and In re Estate of Teichgraeber, 217 Kan. 373, 391, 537 P.2d 174.) The appellants argue their petition filed in the probate court of Doniphan County to remove the real estate in dispute from the inventory was in the nature of a claim against the decedent's estate and was designed to remove real estate from the decedent's estate. The appellants rely primarily on the language in the case

APPENDIX 1, OPINION OF SUPREME COURT OF KANSAS
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of In re Estate of Thompson, supra at 522-523.

K.S.A. 59-1401, reads in part:

"The executor or administrator shall have a right to the possession of all the property of a resident decedent, except the homestead and allowances to the surviving spouse and minor children. ... He or she may by himself or herself, or with the heirs or devisees, maintain an action for the possession of the real estate or to quiet title to the same." (Emphasis added.)

There is no argument that Goldie Keimig was the duly qualified executrix. The probate code under which she qualified clearly and expressly gave her authority to bring an action to quiet title to the real estate in dispute. The decedent, Walter A. Keimig, had possession of the real estate here in dispute at the time of his death and his executrix, Goldie Keimig, succeeded to and had possession of that real estate.

An action to quiet title to real estate "must be brought in the county in which the real estate is situated." (K.S.A. 60-6017Weeks7.) Therefore, venue of an action to quiet title on the facts in this

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case was in Atchison County where the real estate in dispute was situated.

The record here presented discloses no order of the probate court authorizing the executrix to bring an action in the district court of Atchison County to quiet title to the real estate in dispute. K.S.A. 59-301 /Corrick/ (see L. 1976, ch. 243, Sec. 42, and L. 1976, ch. 242, Sec. 99) gave the probate court original jurisdiction to direct and control the official acts of executors and administrators. Thus, it has been held in Lanning v. Goldsberry, 171 Kan. 292, 232 P.2d 611, appropriate for an executor or administrator, before bringing an action for possession of real estate or an action to quiet title to real estate, to advise the probate court of the situation and procure from the probate court an order directing and authorizing him to bring the action. However, the decision makes it clear compliance with the foregoing procedure is not mandatory where the executor or administrator brings

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an action pursuant to statutory authority under 59-1401, supra, for the possession of the real property, or to quiet title to the same.

Cases where the executor or administrator has brought a quiet title action in district court under 59-1401, supra, include Kininmonth v. Carson, 156 Kan. 808, 137 P.2d 173; Collins v. Richardson, 171 Kan. 152, 230 P.2d 1018; and Bell v. Hanes, 190 Kan. 765, 378 P.2d 13. When the executor or administrator brings a quiet title action as he is authorized to do, it is not a case of a court of coordinate jurisdiction interfering with the actions of another court as the appellants argue. (Collins v. Richardson, supra.)

In Kininmonth v. Carson, supra, an administrator of the estate of Sarah Pennington brought a quiet title action against various defendants. Basically the quiet title petition alleged various defendants claimed title to land in Sumner and Cowley Counties by virtue of certain mineral conveyances dated April 11, 1936, and deeds

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dated September 16, 1936, all of which were given while Sarah Pennington was an incompetent and insane person. The district court of Cowley County determined it had jurisdiction of the matter, the plaintiff administrator had legal capacity to sue and Sarah Pennington did not have sufficient mental capacity to execute the conveyances and deeds in 1936. This court applied the clear language of 59-1401, supra, and affirmed. In the opinion the court said:

"It is conceded by all parties that the plaintiff in this action was appointed administrator of Sarah's estate and that the probate court made an order putting him in possession of all the real estate involved. Plaintiff was in possession under this order when this action was commenced. He found the security of his possession threatened by the claims of the two appellants. The same section of the statute which provided for his being put in possession gave him authority to maintain action to quiet title. ..." (p. 818.)

In Collins v. Richardson, supra, Nellie Henderson and three other plaintiffs filed an action in the district court of Ellis County to have their respective interests in a described 680 acre tract of Ellis County

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land determined. The sole defendant was Mollie Richardson. On April 10, 1949, Nellie Henderson, a resident of Rooks County, died testate. Her will was duly admitted to probate and Donald Collins duly appointed administrator c.t.a. of her estate. The Rooks County probate court authorized and directed Collins to revive the quiet title action in the district court of Ellis County, which he did. The district court of Ellis County made certain orders adverse to Mollie Richardson which were affirmed by this court on appeal on December 10, 1949. (Collins v. Richardson, 168 Kan. 203, 212 P.2d 302.) On February 16, 1950, Mollie Richardson, defendant in the Ellis County action, then filed a petition for allowance of demand in the probate court of Rooks County in which she restated the claim she made in the district court of Ellis County. Mollie Richardson alleged that the probate court of Rooks County had jurisdiction and the district court of Ellis County did not have jurisdiction. When the

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matter once again came before this court, the clear language of 59-1401, supra, was cited and it was held the judgment in the Ellis County case should be applied in the probate case in Rooks County. In the opinion the court said:

"Since the statute (G.S. 1949, 59-301) gives the probate court original jurisdiction (3) 'To direct and control the official acts of executors and administrators, . . .' it was proper for Donald Collins, administrator c.t.a. of the estate of Nellie Henderson, to apply to the court for authority to cause the quiet title suit in Ellis county and the suit pending in the supreme court to be revived in his name as administrator c.t.a. and for his authority to employ and pay counsel and to do all things necessary to diligently prosecute the suit to completion. Such an order was applied for and granted. The suit was properly revived under the authority of G.S. 1949, 59-2238, and by virtue of that statute the judgment in that suit will be filed in the probate court of Rooks county in the estate of Nellie Henderson, deceased." (pp. 158-159.)

Counsel for the appellant in Collins v. Richardson, 171 Kan. 152, 230 P. 2d 1018, argued, the same as counsel for the appellants in the instant case, that real property in dispute was inventoried in the decedent's

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estate in the probate court by the duly appointed representative of the estate, and that the appellant in the probate proceeding was trying to get something out of the estate of the decedent, hence the case fell within the first class of cases discussed in the opinion of In re Estate of Thompson, supra. The appellee in Collins argued, if the plaintiff's contentions in the quiet title action in the district court of Ellis County are sustained concerning the real estate in dispute in Ellis County, property would come into the decedent's estate pending in the probate court of Rooks County. In the Collins opinion the court said:

"We think this argument resulting from the classification of claims made by the writer of the opinion in the case of In re Estate of Thompson is more interesting than decisive. In fact, the court was careful to limit this classification to the case then before the court. This is clear from several portions of the opinion, and specifically from the following (p. 523):

" 'As to the second class of cases, the ground has not yet been so fully covered, and we shall not anticipate issues. But we think the disposition

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made of the cases decided rests upon a sound basis. The code now provides in G.S. 1947 Supp. [G.S. 1949], 59-1401, that the executor or administrator shall have the right to the possession of all the property of the decedent, real as well as personal, with certain named exceptions, and may maintain an action for possession of the real estate or to quiet title to the same. Prior to the enactment of the code, such actions were brought in the district court and the code contains no specific provision changing that rule. Consequently, in the cases that have arisen, this court has found no reason to conclude that the legislature intended to change the forum, as was the case in various actions falling within the first class of cases heretofore referred to. . . .'

"We think counsel for appellant rely too heavily upon the case of In re Estate of Thompson. While the classification there made was not inappropriate as applying to that case it is clear that the court had no intention and did not attempt to lay down a rule for all cases in the future which might arise under G.S. 1949, 59-1401. Indeed, the statute makes no such classification of cases. We shall not attempt to decide the controversy between counsel as to whether the action pending in the district court of Ellis county seeks to bring into or to take from the estate of Nellie Henderson pending in the probate court of Rooks county. . . ."

(pp. 157-158.)

In the case of In re Estate of Slaven, 177 Kan.

185, 277 P.2d 580, decided after Collins, the administrator had inventoried the real estate claimed by

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appellees who were grantees in deeds to the real estate. The appellees filed a petition in the estate to strike the real estate from the inventory. The appellees took the position that the probate court did not have jurisdiction and the case should be certified to the district court. The administrator took the position that it was a matter over which the probate court had jurisdiction but which would have to be settled by transfer to the district court. The probate court sustained the appellees' position and certified the matter to the district court. At a pretrial conference the district court advised the parties that it had original jurisdiction and the matter would be tried as though the administrator were proceeding to recover property for the estate. The court ordered the parties to plead as if the administrator were starting an original action in the district court to recover the property. The parties failed to follow the trial court's instructions and filed a pleading referred to as a stipulation and the trial court

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sustained the petition to strike. The Supreme Court ruled that the district court was correct in holding the matter was properly certified to the district court, but the trial court should have required proper pleadings to be filed so as to frame the issues in an action to adjudicate the title to the real estate. The court quoted from Lenning v. Goldsberry, supra, as follows:

"When an administrator, entitled to the possession of the real property of the decedent, learns facts tending to show that certain real property belonged to the decedent at the time of his death, the title of which is in the name of another, he is authorized by G.S. 1949, 59-1401, to maintain an action in the district court for the possession of the real property, or to quiet title to the same."
(p. 189.)

The court in Slaven said:

"The trial judge in a colloquy, to which reference has already been made in this opinion, directed the administrator to plead as if he was starting an original action in the district court to recover the property. For some reason the administrator did not see fit to file such pleadings. He filed the stipulation, to which reference has already been made. The trial court then sustained the petitions to strike. In this the trial court was in error. It should have insisted that proper pleadings be filed and should then have tried the

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action. The trial court was correct, however, in holding that the district court had original jurisdiction." (pp. 189-190.)

In Bell v. Hanes, supra, Carl Bell was the duly appointed administrator of the estate of Virgil Hanes, a resident of Sedgwick County. Bell filed a quiet title action in the district court of Butler County involving title to Butler County land. The defendants challenged the jurisdiction of the Butler County district court. This court held Bell could properly bring an action in the district court of Butler County.

Wright v. Rogers, 167 Kan. 297, 205 P.2d 1010, relied upon by the appellants, was distinguished in Lanning v. Goldsberry, supra at 294.

We hold the district court of Atchison County had jurisdiction to determine the quiet title action upon application of the executrix. The appellants have litigated the quiet title action in Atchison County. Their attempt to litigate the matter in the probate proceeding in Doniphan County was improper. Venue of

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the matter was in Atchison County and the district court of Doniphan County was correct in sustaining the appellee's motion for summary judgment. Res judicata which the trial court assigned as its reason, however, was erroneous.

If the trial court renders a correct judgment under the facts and the law, the judgment will not be disturbed merely because wrong reasons are given for its rendition. (Wallace v. Magie, 214 Kan. 481, 522 P.2d 989.)

The judgment of the lower court is affirmed.

APPENDIX 2, MEMORANDUM DECISION OF THE DISTRICT COURT
OF DONIPHAN COUNTY, KANSAS DATED OCTOBER 9, 1975.

IN THE DISTRICT COURT OF DONIPHAN COUNTY, KANSAS
IN THE MATTER OF THE ESTATE OF WALTER A. KEIMIG, Deceased.
CASE NO. 10,649

The Court has considered the motion of defendant Goldie Keimig, Executrix of the Estate of Walter A. Keimig, Deceased, for summary judgment in accordance with KSA 60-256 (b) on the ground of res judicata. The Plaintiffs appear by their attorney Mr. Charles S. Scott. The defendant appears by her attorney, Mr. Robert D. Caplinger.

On or about April 3, 1972, the plaintiffs herein filed their petition in the Probate Court of Doniphan County, Kansas, asserting that the executrix's ownership and right to possession of certain real estate situated in Atchison County, Kansas was in dispute and that such real estate should be deleted from the inventory. Their prayer was that the Probate Court of Doniphan County, Kansas, determine the title to such real estate.

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Thereafter and on or about September 21, 1972, the defendant herein, brought an action as plaintiff in the District Court of Atchison County, Kansas, to quiet the title to the disputed real estate. On February 13, 1974, the District Court of Atchison County, Kansas, entered its order quieting the title to the disputed real estate in favor of the plaintiff, Goldie Keimig, Executrix of the Estate of Walter A. Keimig, deceased, and against the plaintiffs in the case before this Court.

Thereafter the Probate Court of Doniphan County, Kansas, entered its order of final settlement in said estate in part denying the petition of plaintiffs herein to strike certain real estate from the inventory. This matter comes to this Court upon appeal from the Probate Court of Doniphan County, Kansas, such appeal being duly perfected.

It is the contention of the plaintiffs herein that since their petition was filed with the Probate Court

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of Doniphan County, Kansas, prior to the filing of the petition for quieting the title to such real estate in Atchison County, Kansas, that the Probate Court had exclusive jurisdiction over the matter. The defendant herein contends that the District Court of Atchison County, Kansas is the only forum where the title to such real estate may be determined and that it was determined by said court, was not appealed from and is now res judicata.

KSA 59-1401 specifically provides that the executor or administrator of an estate may maintain a quiet title action. The plaintiffs in the instant case could have or perhaps did raise all issues concerning jurisdiction in the District Court of Atchison County, Kansas, which were determined adversely to them. They cannot now collaterally (sic) attack such judgment in this Court on the basis that the District Court of Atchison County, Kansas was without jurisdiction.

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The Court finds that there are no genuine issues
as to any material facts and that the defendant is en-
titled to summary judgment as a matter of law. And It
Is So Ordered.

Order effective October 9, 1975.

S/ WILLIAM L. STEVENSON
District Judge
22nd Judicial District

APPENDIX 3, ORDER OF SUPREME COURT OF KANSAS
DATED JUNE 15, 1977.

IN THE SUPREME COURT OF THE STATE OF KANSAS

ELLSWORTH BOLDRIDGE and MARY BOLDRIDGE, His Wife,
Appellants,

v.

ESTATE OF WALTER A. KEIMIG, Deceased,
Appellee.

Dated: June 15, 1977
Case No. 48,179

You are hereby notified of the following action
taken in the above entitled case:

Motion by Appellants for Rehearing is DENIED.

Date: June 15, 1977

S/ LEWIS C. CARTER
Clerk, Supreme Court